

In the United States Court of Federal Claims

No. 00-703 C
(Filed: February 2, 2011)

**POWER AUTHORITY OF
THE STATE OF NEW YORK,**

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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ORDER

On January 14, 2011, Plaintiff filed a motion to strike Defendant's First Affirmative Defense, founded on the "unavoidable delays" clause of the Standard Contract, from Defendant's Answer and Affirmative Defenses to an amended complaint filed by Plaintiff in 2009. Defendant filed its response to Plaintiff's motion to strike on January 21, 2011.

On January 12, 2011, however, Plaintiff filed a third amended complaint, to which Defendant responded on January 31, 2011, raising the same affirmative defense. The court construes Plaintiff's motion to strike as directed therefore against the Government's defense to the most recent iteration of Plaintiff's complaint.

In *Entergy Nuclear Fitzpatrick, LLC, v. United States*, No. 03-2627 C, a companion case to this case, the Government raised the same affirmative defense. The plaintiff there moved to strike. This court granted that motion based on the decision of the Federal Circuit in *Nebraska Public Power Dist. v. United States*, 590 F.3d 1357 (Fed. Cir. 2010). *Entergy Nuclear Fitzpatrick, LLC v. United States*, 93 Fed. Cl. 739 (2010).

For the same reasons stated in *Entergy Nuclear Fitzpatrick*, the court hereby GRANTS Plaintiff's motion to strike. Defendant's affirmative defense of "unavoidable delays" is stricken from Defendant's answer and Defendant is barred from defending against liability or damages on the basis of unavoidable delays.

s/ Edward J. Damich
EDWARD J. DAMICH
Judge